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United States
Circuit Court of Appeals
For The Ninth Circuit

FRANK MILLER. ANTON BRONICH
and JOHN THOMAS,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

UPON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION
HONORABLE JEREMIAH NETERER, *Judge*

PETITION FOR REHEARING

FRED C. BROWN,
Attorney for Plaintiffs in Error.

Office and Post Office Address:

201 Lyon Building, Seattle, Washington.

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No. 4666

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HONORABLE JEREMIAH NETERER, *Judge*

PETITION FOR REHEARING

COME NOW the above-named plaintiffs in error
and respectfully petition the Court for a rehearing
of the above case, upon the following grounds:

In the Opinion filed herein the Court says:

“Upon the hearing of the petitions of each
of the plaintiffs in error for the suppression of
such evidence, the Court below, while ruling

that the affidavit on which the search warrant was issued was insufficient to support the same, held the evidence admissible on the ground, that the prohibition officers had visible and other evidence of the presence of intoxicating liquors on the premises before the search and seizure were made, and visible evidence of the commission in their presence of an offense against the United States. Error is assigned to that ruling."

The above quotation is an inadvertent misquotation of the facts of the record. Judge Neterer's decision referring to the petition is as follows:

"The Court holds, by written opinion filed, that the affidavit, upon which the search warrant was issued, is insufficient but denies the motion to suppress the evidence, for the reason that the evidence may be admissible, notwithstanding the unlawful search." (Transcript of Record, page 36.)

On the hearing of the petitions of plaintiffs in error to suppress the evidence, the only evidence before the Court was the petitions of plaintiffs in error to suppress, supported by their affidavits (Transcript of Record 5, 14, 15, 24, 25 and 34). A perusal of the record at that time shows no facts to support the above quotation of your Honors in the written opinion. There was no evidence presented to the Court to indicate that there was a violation of law in the presence of the officers at the

time of the execution of the search warrant. THOSE FACTS FIRST APPEAR IN THE RECORD WHILE THE CASE WAS BEING TRIED BEFORE THE JURY.

We believe that a denial of a motion to suppress the evidence is not an appealable order and that error can be assigned only when the record is brought on appeal from the final decision.

In bringing forward the evidence to apply to the written motion to suppress and the oral motions to suppress before the trial, nullifies the plaintiffs in error's right to a decision of this Court on specification of error (I and II, Brief of Plaintiffs in Error, page 6).

We respectfully submit, that in justice to the rights of the plaintiffs in error, that your Honors re-read the record and render your opinion in the light of the true facts of the record.

Respectfully submitted,

FRED C. BROWN,
Attorney for Plaintiffs in Error.

STATE OF WASHINGTON }
COUNTY OF KING } ss.

FRED C. BROWN, being first duly sworn, on oath deposes and says: That he is the attorney of record for the plaintiffs in error in the above-entitled cause; that he has read the above petition, knows the contents thereof and believes the same are true; that said petition for a rehearing is made in good faith and affiant believes the same is meritorious and that it is not filed for the purpose of delay.

FRED C. BROWN,
Attorney for Plaintiffs in Error.

SWORN and SUBSCRIBED to before me this 9th day of December, 1925.

JACOB KALINA.
Notary Public in and for
the State of Washigton,
residing at Seattle. *51*

(S.L.S.)